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BEFORE THE ARIZONA CORPORATION COMMISSION

**COMMISSIONERS**

GARY PIERCE, Chairman  
BOB STUMP  
SANDRA D. KENNEDY  
PAUL NEWMAN  
BRENDA BURNS

2012 OCT 11 A 11:27

AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

OCT 11 2012

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IN THE MATTER OF THE APPLICATION OF )  
WATER UTILITY OF GREATER TONOPAH )  
FOR THE ESTABLISHMENT OF JUST AND )  
REASONABLE RATES AND CHARGES FOR )  
UTILITY SERVICE DESIGNED TO REALIZE )  
A REASONABLE RATE OF RETURN ON THE )  
FAIR VALUE OF ITS PROPERTY )  
THROUGHOUT THE STATE OF ARIZONA )

DOCKET NO. W-02450A-12-0312

**REPLY OF NEW WORLD PROPERTIES,  
INC. IN SUPPORT OF APPLICATION  
FOR LEAVE TO INTERVENE**

New World Properties, Inc. ("NWP") respectfully submits this Reply in Support of its Application for Leave to Intervene in this docket. The reply addresses the Response in Opposition to the Application for Leave to Intervene of NWP filed by Water Utility of Greater Tonopah ("WUGT") on September 26, 2012. For the reasons set forth herein, NWP requests that the Commission grant its Application for Leave to Intervene.

**1. NWP will be directly and substantially affected by this rate case.**

**a. NWP was granted intervention in the last WUGT rate case without any objection by WUGT.**

NWP was granted leave to intervene in the last rate case involving WUGT filed in 2009 in Docket No. SW-20445A-09-0077 et al. In its Application for Leave to Intervene in that rate case, NWP stated the following:

1 NWP is the owner and developer of a project commonly known as  
2 Copperleaf, which is a 1,280 acre master planned development located in  
3 the Tonopah area. Copperleaf is located in the water and sewer CC&N's of  
4 Global Water subsidiaries. NWP will be directly and substantially affected  
5 by the decision of the Commission in this matter. NWP's participation in  
6 this matter will not broaden the issues nor unduly delay the proceeding.<sup>1</sup>

7 WUGT did not object to NWP's Application for Leave to Intervene even though  
8 it was filed after the deadline for intervention. While Utilities Division Staff did object  
9 to the application, primarily on the basis that it was filed after the intervention deadline,  
10 the Administrative Law Judge ("ALJ") still granted the application, ruling that  
11 "[b]ecause it will be affected by the outcome of this proceeding, NWP should be  
12 granted intervention in order to allow it to participate in the hearing and cross examine  
13 witnesses on issues already raised in prefiled testimony."<sup>2</sup>

14 In its Application for Leave to Intervene in this docket, NWP used almost  
15 verbatim the language it used in its application to intervene in the last WUGT rate case.  
16 Yet in this proceeding, WUGT now opposes the intervention. WUGT fails to offer any  
17 explanation regarding its change of course, and fails to explain why NWP should be  
18 denied intervention in this rate case when the Commission previously found that NWP

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20 <sup>1</sup> Application for Leave to Intervene of New World Properties, Inc., dated December 1, 2009, at 1  
21 (Docket No. SW-20445A-09-0077 et al.). NWP is sometimes listed as an owner of the property  
22 commonly referred to as Copperleaf ("Copperleaf Property") because, as was detailed in WUGT's  
23 filing, the M. Chandler Brown Company, LLC is one of the beneficiaries (beneficial owner) of First  
24 American Title Insurance Company Trust 8559 with Mark C. Brown being the Manager of the LLC.  
25 The Trust Agreement regarding First American Title Insurance Company Trust 8559 authorizes Mark  
26 C. Brown to direct the Trustee on behalf of the Beneficiaries. Mark C. Brown is the President of New  
World Development, Inc. Saying NWP is an owner is a short hand way of saying Mark C. Brown is a  
beneficial owner.

<sup>2</sup> Procedural Order dated December 4, 2009, at 3, of lines 5-8 (Docket No. SW-20445A-09-0077 et al.).  
Due to the lateness of the intervention request, the ALJ ruled that NWP would not be allowed to  
introduce new evidence. However, this limitation would presumably not have been included had the  
intervention request been filed before the deadline.

1 would be directly and substantially affected by the last rate case. The Commission  
2 previously determined that NWP was "directly and substantially affected" by the 2009  
3 WUGT rate case and that finding should be binding in this rate case absent showing that  
4 there has been some material change in circumstances with regard to NWP.

5 **b. Intervenor status is not limited to customers of a utility as WUGT**  
6 **asserts.**

7 Citing a procedural order in the current Far West Water & Sewer rate case  
8 (Docket No. WS-03478A-12-0307), WUGT asserts that intervention in a rate case  
9 should be limited to "customers" of WUGT, thereby precluding NWP from  
10 participating as an intervenor. However, intervention may be granted to any "person"  
11 who is "directly and substantially affected" by the proceeding. Arizona Administrative  
12 Code ("A.A.C.") R14-3-105(A) states:  
13

14 Intervention. **Persons**, other than the original parties to the proceedings,  
15 who are **directly and substantially affected by the proceedings**, shall  
16 secure an order from the Commission or presiding officer granting leave to  
17 intervene before being allowed to participate. (Emphasis added).

18 NWP is clearly a "person" that is "directly and substantially affected" by this rate  
19 case which should be allowed to intervene. WUGT is seeking to increase gross  
20 revenues by \$678,348, or 326.6% over test year revenues<sup>3</sup>. The proposed increase in  
21 revenues from residential customers is a staggering 330.1%. As an owner and the  
22 developer of residential property within the CC&N of WUGT, NWP reasonably  
23 believes that such a dramatic increase in WUGT's rates will directly and substantially  
24 affect its ability to develop and market the Copperleaf property.

25 \_\_\_\_\_  
26 <sup>3</sup> WUGT Revised Schedule A1, attached to WUGT's September 26, 2012 filing.

1 This Commission has a longstanding practice of granting intervention to entities  
2 which are not customers of a utility including but not limited to, AARP, the Water  
3 Utility Association of Arizona, SWEEP, the Arizona Association of Realtors, the  
4 Arizona Investment Council, Arizonans for Electric Competition and Choice, the  
5 Arizona Competitive Power Alliance, labor unions, political subdivisions of the State of  
6 Arizona and the Residential Utility Consumer Office ("RUCO"). In the Far West Water  
7 & Sewer rate case referenced above, RUCO filed a response in support of an  
8 application for leave to intervene stating that intervention should be considered from an  
9 inclusive viewpoint:  
10

11 Aside from the legal reasons, it is good policy for the Commission to  
12 consider intervention more from an inclusive viewpoint, then an exclusive  
13 viewpoint. It would not be good policy for the public to have the  
14 impression that Commission proceedings are closed and/or exclusive.  
15 Intervention in this case will also assure a more thorough record. Unless  
16 the situation clearly shows a lack of interest, which is not the case here, the  
17 Commission should lean towards intervention.<sup>4</sup>

18 There is nothing in A.A.C. R14-3-105 which limits intervention to only  
19 customers of a utility. NWP has asserted that it is an owner and developer of property  
20 within the CC&N of WUGT. As such, it will be directly and substantially affected by  
21 this proceeding and should be granted leave to intervene.

22 **c. NWP either currently is or will soon be a customer of WUGT.**

23 NWP has a will serve letter from WUGT which means that if it is not  
24 already a customer of WUGT, it will be a customer in the near future. A copy of the

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25 <sup>4</sup> RUCO's Response in Support of Spartan's Motion for Reconsideration re Intervention dated August  
26 31, 2012, at 2 (Docket No. WS-03478A-12-0307).

1 will serve letter is attached hereto as Exhibit A. The letter, written to NWP, details that  
2 WUGT will provide water service to the Copperleaf Property and build the necessary  
3 infrastructure to serve water within 18 months of a start work notice from NWP, subject  
4 to NWP performing certain other obligations under the Infrastructure Coordination and  
5 Finance Agreement ("ICFA"), recorded against the property<sup>5</sup>. If NWP were to issue a  
6 start work notice tomorrow, NWP would be receiving bills in 18 months. Present  
7 customers and future customers who have an established relationship with the utility  
8 will both be affected by the outcome of this proceeding.  
9

10 **d. NWP is legally authorized to act on behalf of the owner of the**  
11 **Copperleaf Property.**

12 WUGT asserts that NWP should not be granted intervention because it is  
13 not the owner of the Copperleaf Property. In fact, WUGT goes so far as to say that  
14 "[a]ny connection NWP has to the property is greatly attenuated."<sup>6</sup> As WUGT correctly  
15 states in its Response, the Copperleaf Property is held in a land trust at First American  
16 Title Company in Trust #8559 (the "Trust"). NWP is acting on behalf of the Trust to  
17 protect the interests of the Trust and its beneficiaries. This authority is explicitly  
18 spelled out as it relates to this proceeding in a letter from the trustee of the Trust  
19 attached hereto as Exhibit B. NWP also performs this same role as it relates to the  
20 zoning of the Copperleaf Property and other interactions with government and  
21 regulatory agencies. WUGT's familiarity with the role that NWP performs for the Trust  
22  
23  
24

25 <sup>5</sup> This document is recorded in Maricopa County Document # 20060939366

26 <sup>6</sup> WUGT Response at 2, lines 23-24.

1 is demonstrated by WUGT's Response. Exhibit D<sup>7</sup> of WUGT's Response is a Special  
2 Warranty Deed for the Copperleaf Property. The Grantee on the Deed is listed as "First  
3 American Title as Trustee under its Trust no. 8559 *C/O New World Properties.*"  
4 (Emphasis added).

5 Additionally, WUGT has been aware of NWP's standing as it relates to the  
6 Copperleaf Property for at least six years. In Docket No. W-02450A-06-0626, WUGT  
7 requested an extension of its CC&N and as part of the application, filed a request for  
8 service letter from NWP.<sup>8</sup> A copy of the request for service from NWP is attached  
9 hereto as Exhibit C. As noted above, WUGT issued a will serve letter to NWP in June  
10 of 2009. It appears that WUGT will readily acknowledge that NWP is the owner of the  
11 Copperleaf Property when it wants to extend its CC&N to include the property, but then  
12 hangs its hat on a disingenuous technical distinction when it seeks to oppose  
13 intervention.  
14  
15

16 Additionally, as will be discussed later, NWP and Global Water Resources, LLC  
17 ("Global Water") just concluded an arbitration proceeding in which Global named  
18 NWP as a defendant and understood that NWP was acting on behalf of the Trust. NWP  
19  
20  
21

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22 <sup>7</sup> Exhibit D of WUGT's response as originally filed was a confidential document pursuant to a  
23 confidentiality agreement between Global Water and NWP as part of an arbitration proceeding between  
24 the parties. WUGT's unsuccessful attempts to cure the release of confidential documents have resulted  
25 in a new Exhibit D being submitted. WUGT has not changed its Response so the confidential document  
26 is still referred to in the body of the Response. Any reference in this pleading to Exhibit D is to the  
Special Warranty Deed.

<sup>8</sup> Docket No. W-02450A-06-0626, Application at Exhibit 4. The Request for Service letter was sent to  
Hassayampa Utility Company, the sewer provider in the area owned by Global Water, but the request  
also covered water service.

1 is the proper entity to act on behalf of the Trust as it relates to the Copperleaf Property  
2 and should be granted intervention.

3 e. **NWP and Global Water, the parent of WUGT, are parties to an**  
4 **Infrastructure Coordination and Finance Agreement.**

5 The Trust entered into an ICFA with Global Water, the parent of WUGT,  
6 on July 11, 2006. Under that ICFA, the Trust, through NWP, has paid Global Water  
7 \$3,750,000 to date. NWP was the only entity with an ICFA that requested intervention  
8 in the 2009 WUGT rate case and could potentially be the only entity with an ICFA to  
9 seek intervention in this rate case. Entities that entered into these types of agreements  
10 with the parent of WUGT possess information that may be useful to the Commission in  
11 rendering its decision in this matter. Additionally, the sizeable amount of money that  
12 the parent of WUGT has received from the Trust through NWP for construction of  
13 utility infrastructure to serve the Copperleaf Property shows how NWP will be  
14 substantially and directly affected by the outcome of the proceedings.  
15

16 For all of the reasons stated above, NWP will be directly and substantially  
17 affected by the outcome of these proceedings and should be granted intervention in the  
18 above captioned docket.  
19

20 2. **Granting NWP intervention will not unduly broaden the scope of the**  
21 **proceeding.**

22 In its Response, WUGT asserts that NWP wishes to re-litigate issues it lost in a  
23 recent arbitration over the ICFA between the parties, thereby unduly broadening the  
24 scope of this proceeding. This unfounded speculation is simply untrue. The only  
25 mention of the concluded arbitration proceeding in this docket has been an out of  
26


1 context reference by WUGT. NWP can assure the Commission that it will not seek to  
2 re-litigate issues that were resolved in the arbitration, but rather will focus on issues  
3 specifically related to this rate case, as they affect the Copperleaf Property. These  
4 issues include, but are not limited to: (i) the level of service that WUGT provides to its  
5 customers; (ii) the appropriate amount of the increase (if any) in WUGT's rates and  
6 charges; (iii) whether a 330%-plus residential rate increase for a utility with few  
7 customers will result in a windfall to WUGT as additional customers come on line; (iv)  
8 the impact on rates related to dealings between WUGT and "affiliates" of WUGT within  
9 the meaning of A.A.C. R14-2-801(1); (v) compliance by WUGT with applicable  
10 statutes, rules and orders of the Commission; (vi) the status of water plant necessary to  
11 provide adequate water service to customers of WUGT, including those who will live  
12 within the Copperleaf Property; and (vii) whether all present and future customers of  
13 WUGT are being treated equally by the utility. Each of these issues is appropriate for  
14 analysis in a rate case because each bears directly upon service to customers and/or  
15 rates and charges for service. And, none of these issues will unduly broaden the  
16 proceeding. NWP believes it has information regarding each of these issues which  
17 other parties in the case may not have which will assist the Commission in its analysis  
18 of WUGT's rate request.  
19  
20  
21

22 As stated above, NWP has paid more than \$3,750,000 so far to the parent of  
23 WUGT for water and sewer service to the Copperleaf Property. Clearly, NWP has a  
24 direct and substantial interest in the long term viability of WUGT.  
25  
26



1 For the reasons stated above, it is clear that NWP is directly and substantially  
2 affected by this rate case proceeding and that NWP's intervention will not unduly  
3 broaden the issues in the case. Thus, NWP respectfully requests that the Commission  
4 grant its Application for Leave to Intervene.

5 RESPECTFULLY SUBMITTED this 11th day of October, 2012

6  
7  
8   
9 Garry D. Hays, Esq.  
The Law Offices of Garry D. Hays, PC  
1702 East Highland Avenue, Suite 204  
Phoenix, Arizona 85016

10 and

11 Jeffrey W. Crockett, Esq.  
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12 One East Washington Street, Suite 2400  
13 Phoenix, Arizona 85004

14 *Attorneys for New World Properties, Inc.*

15 ORIGINAL and thirteen (13)  
16 copies filed on October 11, 2012 with:

17 Docket Control  
Arizona Corporation Commission  
18 1200 West Washington Street  
Phoenix, AZ 85007

19 Copies of the foregoing  
20 Mailed/hand delivered on October 11, 2012 to:

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Chief Administrative Law Judge  
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Arizona Corporation Commission  
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24 Janice Alward, Esq.  
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# Exhibit

“A”



June 10, 2009

Mr. Mark C. Brown  
New World Properties, Inc.  
8540 E. McDowell Road, #90  
Mesa, AZ 85207

RE: Will Serve Letter for Copperleaf

Dear Mark:

Water Utility of Greater Tonopah, Inc. ("WUGT") is a private water company authorized by the Arizona Corporation Commission ("ACC") to furnish water utility service within portions of Maricopa County. WUGT has been requested to provide water utility service to the Copperleaf development as set forth on the legal description attached to this letter as Exhibit A (the "Development").

Based upon execution of water line extension agreements and fulfillment of all obligations by the landowner under the current agreements recorded against the land as well as any other regulatory approvals including Arizona Department of Water Resources, WUGT has agreed to provide water utility service to the Development. Further, WUGT has agreed to finance and construct offsite facilities and infrastructure necessary to serve the Development in accordance with the line extension agreements, and to achieve substantial completion of those facilities and infrastructure within 18 months of the issuance of a notice to bid work and start construction ("Start Work Notice") by landowner. Specifically, pursuant to the conditions noted above, WUGT shall finance and construct the following facilities and infrastructure subject to final engineering and regulatory approvals: plant, including wells, and distribution mains pursuant to Exhibit H of the Infrastructure Coordination, Finance and Option Agreement.

Please feel free to contact me if you have any questions or require any additional information. We look forward to serving your development.

Respectfully yours,  
WATER UTILITY OF GREATER TONOPAH, INC.

A handwritten signature in blue ink, appearing to read 'Cindy M. Liles'.

Cindy M. Liles  
Secretary and Treasurer

Exhibit

“B”



*First American  
Title Insurance Company*

October 4, 2012

New World Properties, Inc.  
8540 E McDowell Rd #90  
Mesa, AZ 85207

Re: Water Utility of Greater Tonopah Rate Case: First American Title Insurance Company,  
as Trustee of Trust No. 8559, and not personally ("The Trust") Authorization of New World  
Properties, Inc. ("NWP")

To Whom It May Concern:

The Trust Beneficiaries have determined that it is in the best interest of The Trust to  
intervene in the Water Utility of Greater Tonopah/Global Water Utilities rate case. By this letter,  
The Trust acting pursuant to the direction of its Trust Beneficiaries, hereby appoints and  
authorizes NWP to take any and all actions on behalf of The Trust as such relate to the above  
referenced rate case. This includes retaining legal counsel, filing for intervention, providing  
testimony and any other actions deemed by NWP to be in the best interest of The Trust.

Sincerely,

Simin Berry, MBA  
Senior Trust Officer

P. O. Box 52023 • Phoenix, AZ 85072

TEL (602)685-7033 • FAX (602)685-7029

siberry@firstam.com

Exhibit

“C”



New World Properties, Inc.

May 10, 2006

Cindy Liles  
Hassayampa Utility Company  
21410 N. 19<sup>th</sup> Avenue  
Suite 201  
Phoenix, AZ 85027

RE: Sewer, Water, and Reclaimed Water Service

Ms. Liles,

As we have progressed with the entitlement for our project at 395<sup>th</sup> & I-10, referred to as Copperleaf, it has become apparent that Hassayampa Utility Company provides a viable option for coordinated water, wastewater, and reclaimed water service for the area. We recognize the necessity for having all three services provided on a regional basis and welcome your entrance into this area as a regional provider.

We, therefore request to be included in your submittal for the MAG 208 filing in the region.

Regards,

Mark C. Brown  
President, New World Properties, Inc.